

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #10	CCRB Case #: 201809981	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 11/25/2018 5:05 PM	Location of Incident: Intersection of 183rd Street and Jamaica Avenue	Precinct: 103	18 Mo. SOL 5/25/2020	EO SOL 1/9/2021	
Date/Time CV Reported Sun, 11/25/2018 5:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/30/2018 1:26 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Nicoll	19740	958984	103 PCT
2. DTS Daniel Gasperetti	4088	950480	103 PCT
3. SGT Kengming Chang	04463	918762	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Nathan Mole	04654	911121	103 PCT
2. POM Dylan Macdowell	00597	965297	103 PCT
3. POM John Giglia	15102	955949	103 PCT
4. POM Anthony Loffredo	20174	958825	103 PCT
5. POM Krzysztof Wnorowski	13514	956338	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Nicoll	Abuse: Police Officer Kevin Nicoll stopped § 87(2)(b)	
B.DTS Daniel Gasperetti	Abuse: Detective Daniel Gasperetti stopped § 87(2)(b)	
C.SGT Kengming Chang	Abuse: Sergeant Kengming Chang stopped § 87(2)(b)	
D.DTS Daniel Gasperetti	Force: Detective Daniel Gasperetti used physical force against § 87(2)(b)	
E.POM Kevin Nicoll	Force: Police Officer Kevin Nicoll used physical force against § 87(2)(b)	
F.DTS Daniel Gasperetti	Abuse: Detective Daniel Gasperetti frisked § 87(2)(b)	
G.POM Kevin Nicoll	Abuse: Police Officer Kevin Nicoll searched § 87(2)(b)	
H.DTS Daniel Gasperetti	Abuse: Detective Daniel Gasperetti failed to provide § 87(2)(b) with a business card.	
I.POM Kevin Nicoll	Abuse: Police Officer Kevin Nicoll failed to provide § 87(2)(b) with a business card.	
J.SGT Kengming Chang	Abuse: Sergeant Kengming Chang failed to provide § 87(2)(b) with a business card.	

Case Summary

On November 25, 2018, § 87(2)(b) who was § 87(2)(b) old at the time of this incident, filed this complaint with IAB by phone. It was received at the CCRB on November 30, 2018, under IAB original log number 18-46137.

On November 25, 2018, at approximately 5:05 p.m., at the intersection of Jamaica Avenue and 183rd Street in Queens, PO Kevin Nicoll, Det. Daniel Gasperetti, and Sgt. Kengming Chang, all of the 103rd Precinct, stopped § 87(2)(b) (**Allegations A, B, and C: Abuse of Authority – Stop, § 87(2)(g)**). PO Kevin Nicoll and Det. Gasperetti allegedly took § 87(2)(b) to the ground, placed him into handcuffs, and lifted him from the ground (**Allegations D and E: Force – Physical Force, § 87(2)(g)**). Det. Gasperetti frisked § 87(2)(b) (**Allegation F: Abuse of Authority – Frisk, § 87(2)(g)**). PO Nicoll searched § 87(2)(b)'s bag (**Allegation G: Abuse of Authority – Search (of person), § 87(2)(g)**). Det. Gasperetti, PO Nicoll, and Sgt. Chang left the location without providing § 87(2)(b) with business cards (**Allegations H, I, and J: Abuse of Authority – Failure to Provide RTKA Card, § 87(2)(g)**).

Body-worn camera footage from Det. Gasperetti (**BR 01**), PO Nicoll (**BR 02**), PO John Giglia (**BR 03**), PO Timothy Slevin (**BR 04** and **BR 05**), PO Anthony Lofreddo (**BR 06**), PO Krzysztof Wnorowski (**BR 07**), and Sgt. Nathan Mole (**BR 08** and **BR 09**) captured portions of this incident, the relevant portions of which are discussed below. There was no other video footage of this incident.

No summonses or arrests resulted from this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kevin Nicoll stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Detective Daniel Gasperetti stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Kengming Chang stopped § 87(2)(b)

It was undisputed that on November 25, 2018, at approximately 5:05 p.m., at the intersection of 183rd Street and Jamaica Avenue in Queens, PO Nicoll, Det. Gasperetti, and Sgt. Chang stopped § 87(2)(b) who immediately ran from them, because he generally matched the description of an individual wanted in connection to a recent cell phone robbery. § 87(2)(b)'s mother, § 87(2)(b) did not witness the incident but requested that she be present during his interview.

§ 87(2)(b) who is a black male, 5'8" tall, 120 pounds, with brown hair and brown eyes, consistently stated (**BR 10, BR 34, and BR 35**) that he was walking back to § 87(2)(b) in Queens, from a deli, located at 182-43 Jamaica Avenue, where he had purchased a small cheese roll and a piece of cake, which he was carrying in a white, opaque, plastic bag. He was wearing a black and gray moderately puffy jacket, a hoodie, blue sweatpants, and black and white Nike slip on sandals. § 87(2)(b) was standing on the southwest corner of the intersection of 183rd Street and Jamaica Avenue waiting for the light to change when a dark blue sedan stopped on 183rd Street between the east and west sides of the street.

Det. Gasperetti, PO Nicoll, and Sgt. Chang, who were wearing plainclothes, exited the car and started walking toward § 87(2)(b) without announcing to him that they were police officers. § 87(2)(b) was scared because he did not know who the officers were, so he ran approximately two to three feet into the street before PO Nicoll, Det. Gasperetti, and Sgt. Chang stopped him by taking him to the ground.

PO Nicoll (**BR 13**) stated that he was in the front driver's seat, Det Gasperetti, was driving, and Sgt. Chang was in the back seat of an unmarked sedan, when he received a radio communication in regard to a cell phone robbery in progress in the general vicinity of 183rd Street and Jamaica Avenue (PO Nicoll could not recall the exact location of the robbery, but it was within two to three blocks of that location).

The initial description that came over the radio was for a Hispanic male, however, when the initial responding sector arrived at the incident location, they updated the description to a black male with a bag. There was no description of the bag, no clothing description, and no additional information that PO Nicoll could recall. PO Nicoll and his partners immediately began canvassing the area for an individual matching the description of a black male carrying a bag.

At the intersection of 183rd Street and Jamaica Avenue, PO Nicoll saw § 87(2)(b) a black male carrying a bag, and told Det. Gasperetti to turn onto 183rd Street. Det. Gasperetti saw § 87(2)(b) and agreed with PO Nicoll that he matched the updated description they had received over the radio. PO Nicoll, who was closest to § 87(2)(b) opened his door, identified himself as a police officer, and showed § 87(2)(b) his shield, which was hanging around his neck. § 87(2)(b) immediately ran toward the back of the unmarked police car into the street toward the driver's side of the car. PO Nicoll exited the car and started to run after § 87(2)(b) but, before he could catch up with him, § 87(2)(b) tripped and fell face-down onto the ground by the trunk on the rear driver's side of the police car.

Det. Gasperetti's statement (**BR 14**) was generally consistent with that of PO Nicoll with the following exceptions noted. The initial description that came over the radio was for a black or Hispanic male carrying bags wanted in regard to grand larceny, the description was updated to a black male. Det. Gasperetti, PO Nicoll, and Sgt. Chang all agreed that § 87(2)(b) matched the description and decided to approach him because he was in close proximity to the original incident location, only a few minutes had passed since they had received the radio communication, and he generally matched the description.

Sgt. Chang's statement (**BR 15**) was generally consistent with those of PO Nicoll and Det. Gasperetti with the following exceptions noted. The initial description was for a Hispanic male, but that was soon updated to a black male with a bag. Sgt. Chang could not recall if any additional descriptors were provided. PO Nicoll was the first to observe § 87(2)(b) but all three officers agreed that he matched the description.

None of the body-worn camera footage captures PO Nicoll, Det. Gasperetti, and Sgt. Chang canvassing for the wanted individual or nor does it capture when they initially decide to approach § 87(2)(b). PO Giglia's body-worn camera footage (**BR 03**) begins after § 87(2)(b) has been placed into handcuffs but captures dialogue between PO Giglia and Det. Gasperetti regarding the description of the individual wanted in regard to the robbery. At 1:25 minutes, PO Giglia says, "You know it doesn't fit at all, right? You know that, right? It doesn't fit it at all. Not even close." At 1:56 minutes, PO Giglia says "It's not even close to the script." An officer outside of the frame asks, "Is it positive over there? The other guy stopped?" PO Giglia replied, "They're on their way now. Male Hispanic wearing all black..." Det. Gasperetti interjects, "They changed it to male black." PO Giglia continues, "...wearing a hat, beanie."

The original 911 call (**BR 16** and **BR 36**) was placed at approximately 4:44 p.m. The caller initially states that a male grabbed her aunt's cell phone out of her hand at the intersection of 181st Street and 89th Avenue in Queens and that she did not know his ethnicity. At approximately 4:45 p.m., the caller states that the male was wearing a navy-blue jacket. Eleven seconds later, she adds that he was wearing all black and a black hat and that he ran toward 182nd Street. A few seconds later, a male voice in the background states that the male was headed toward Jamaica Avenue. The caller then adds that the male was approximately 5'1" tall. At approximately 4:47 p.m., she states that the male is Hispanic with a medium complexion. At approximately 4:48 p.m. she states that no weapons or injuries were involved and ends the call.

According to EVENT § 87(2)(b) (BR 17), the 911 call was placed at 4:44 p.m. The initial description provided is of a male of unknown race wearing all black on 182nd Street headed toward Jamaica Avenue. At 4:51 p.m., there is an update from a witness stating that the perpetrator had a black plastic bag in his hand, and, at 4:52 p.m., it is updated again to say that he is approximately 20 years old wearing a black “skully” cap. At 4:54 p.m. it is updated again to note that he is wearing a long sleeve black sweater and a beanie.

The radio communications (BR 19 and BR 37), which start at approximately 4:46 p.m., begin with Central stating that there is a larceny in progress at 181st Street and 89th Avenue. The initial description provided is of a male of unknown race wearing a black jacket headed towards 182nd Street and Jamaica Avenue. Approximately one minute later, Central states that the perpetrator is a Hispanic male with a medium complexion, 5’1” tall, wearing all black. At approximately 4:49 p.m., the 103rd Precinct Patrol Sergeant, who has responded to the scene, adds that the perpetrator ran eastbound on 89th Avenue and that he has a witness who states that the perpetrator is carrying a black plastic bag and is approximately 20 years old. At approximately 5:04 p.m., Response Auto 7 states that they have additional information that the perpetrator is a young black male wearing a long-sleeve sweater, carrying a plastic bag, with a beanie (no bag color is noted). Central asks Response Auto 7 to confirm the race of the perpetrator, and, a few seconds later, Response Auto 7 says, “Correction, Hispanic.” At approximately 5:05 p.m., the 103rd Precinct Anti-Crime Sergeant states that they have a possible male suspect stopped at 183rd Street and Jamaica Avenue. At approximately 5:09 p.m., the 103rd Precinct Patrol Sergeant states, “Advise the units on 183 and Jamaica that that’s going to be a negative.”

The Stop Report (BR 20), prepared by Det. Gasperetti, states that officers stopped § 87(2)(b) because he matched the description of an individual wanted in regard to a robbery in progress and was in close proximity to the crime. Officers identified themselves verbally and with their shields, and, as § 87(2)(b) ran away from them, he tripped out of his flip flops and fell to the ground.

PO Nicoll, Det. Gasperetti, and Sgt. Chang all consistently stated that they stopped § 87(2)(b) at the intersection of 183rd Street and Jamaica Avenue because he matched the description of an individual wanted in regard to a recent cell phone robbery at the intersection of 181st Street and 89th Avenue in Queens. It was undisputed that § 87(2)(b) ran away from the officers as soon as they approached him.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

In People v. Peterson, 110 A.D.3d 1103, 2013 (BR 25) the court found that officers had reasonable suspicion to stop an individual based on the general similarity of the individual's physical characteristics to the description of the offender broadcast in police radio calls, and the observation of the individual in close spatial and temporal proximity to the crime.

In People v. Warren, 276 A.D.2d 202, 2000 (BR 26) the court found that information transmitted to an officer by radio about a robbery along with spatial proximity and flight at the sound of the officer's radio provided the officer with reasonable suspicion to pursue and detain the individual for identification by the victim.

§ 87(2)(g)

Allegation (D) Force: Detective Daniel Gasperetti used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Kevin Nicoll used physical force against § 87(2)(b)

Allegation (F) Abuse of Authority: Detective Daniel Gasperetti frisked § 87(2)(b)

It was undisputed that, upon approach, § 87(2)(b) ran away from the officers and that after the officers had stopped § 87(2)(b) Det. Gasperetti frisked § 87(2)(b). It was also undisputed that § 87(2)(b) came to be on the ground during the stop and sustained minor cuts and bruises to his elbow, toe, and hips. In dispute was how § 87(2)(b) came to be on the ground.

§ 87(2)(b) stated (BR 10, BR 34, and BR 35) that after he ran, PO Nicoll, Det. Gasperetti, and Sgt. Chang then him to the ground such that he was lying face-down on the street. (When asked to elaborate which officers took him to the ground and how the officers took him to the ground, § 87(2)(b) stated that he did not know and that he could not recall where on his body the officers made contact. Mr. Walton interjected and did not allow § 87(2)(b) to answer further questions about how he came to be on the ground.)

Once he was on the ground, one of the officers placed § 87(2)(b) into handcuffs. As the officer did this, § 87(2)(b) was moving his feet and hands, but he could not recall how exactly he was moving. § 87(2)(b) felt an officer holding his hands and applying pressure to his body to hold him down, but he could not recall where on his body he felt this pressure. As a result of this contact with the ground, § 87(2)(b) sustained a scrape to his right left toe, bruising and small scrapes to his right and left front hips, and bruising to his elbows.

One of the officers stood § 87(2)(b) up, and then the officers identified themselves to § 87(2)(b) as police and showed him their shields. § 87(2)(b) was not sure if any of the officers patted down his clothes or pockets. Det. Gasperetti asked § 87(2)(b) why he had run away from them and explained to him that they were looking for someone who had stolen a cell phone in the area. After a few moments, Det. Gasperetti told § 87(2)(b) that they had found the culprit, and he removed the handcuffs from § 87(2)(b) s wrists.

§ 87(2)(b) returned to § 87(2)(b) and called 911 to report what had just happened with the officers. A few minutes later, an ambulance responded to the scene and took § 87(2)(b) to § 87(2)(b), where his wounds were cleaned and bandaged.

According to § 87(2)(b)'s Prehospital Care Report (**BR 11**), EMTs responded to § 87(2)(b) at approximately 5:45 p.m. and transported § 87(2)(b) to § 87(2)(b). § 87(2)(b) told EMTs that he was suffering from pain in his right hip, right elbow, and right toe. Controlled bleeding was noted on his right big toe and his right hip. § 87(2)(b) stated that he sustained the injuries while he was being detained by NYPD officers.

§ 87(2)(b)'s medical records from § 87(2)(b) (**BR 12**), were generally consistent with the Prehospital Care Report. § 87(2)(b) presented with abrasions on his right arm and left hip, which he stated he sustained after falling and being pushed to the ground during an arrest. § 87(2)(b)'s wounds were cleaned and bandaged, and he was discharged with no medications prescribed.

PO Nicoll (**BR 13**) stated that he was approximately five feet away from § 87(2)(b) when he started to run and fell to the ground. As soon as § 87(2)(b) had started to run, Det. Gasperetti exited the car from the front driver's side. Det. Gasperetti was also approximately five feet away from § 87(2)(b) when he fell to the ground, but Det. Gasperetti was slightly closer to § 87(2)(b) and got to him just before PO Nicoll did. Sgt. Chang was the last to get out of the car. None of the officers came into physical contact with § 87(2)(b) before he was already on the ground.

Det. Gasperetti stood over § 87(2)(b) with one leg on either side of § 87(2)(b)'s lower legs, and PO Nicoll stood by § 87(2)(b)'s head. PO Nicoll and Det. Gasperetti both took § 87(2)(b)'s arms out from underneath him and held his hands behind his back. § 87(2)(b) did not offer any physical or verbal resistance. § 87(2)(b) was still lying in the street, so PO Nicoll and Det. Gasperetti stood § 87(2)(b) up by lifting him by the upper arms and walked him over to the sidewalk. Once they were on the sidewalk, Det. Gasperetti placed § 87(2)(b) into handcuffs and explained to him that they had stopped him because he matched the description of a person wanted in regard to a recent cell phone robbery and because he had run away when they tried to talk to him.

PO Nicoll, Det. Gasperetti, and Sgt. Chang waited a few moments for a patrol car with the victim to arrive. After a few moments, the patrol car arrived and informed PO Nicoll, Det. Gasperetti, and Sgt. Chang that they had the wrong individual. Det. Gasperetti immediately removed the handcuffs from § 87(2)(b)'s wrists and told him that he could go. § 87(2)(b) stated that he had some bruises but did not request any medical attention and left the location after verbally giving his name and birthdate to PO Nicoll.

Det. Gasperetti's statement (**BR 14**) was generally consistent with that of PO Nicoll with the following exceptions noted. § 87(2)(b) ran approximately two car lengths into the middle of the street when he ran out of his flip flops and fell to the ground. § 87(2)(b) fell to one knee, placed his hands in front of him to break the fall, and then went down to the ground face-first. No officers made contact with § 87(2)(b) prior to him falling to the ground. Once § 87(2)(b) was on the ground, Det. Gasperetti placed him into handcuffs with minimal assistance from PO Nicoll and Sgt. Chang. Det. Gasperetti heard over the radio that another unit also had a suspect in custody at another location. While Det. Gasperetti, PO Nicoll, and Sgt. Chang waited for a patrol car to respond to conduct a show-up with the victim, Det. Gasperetti decided to pat down the exterior of § 87(2)(b)'s waist and pants because § 87(2)(b) had matched the description given over the radio of an individual wanted in relation to a robbery, which Det. Gasperetti considered to be a violent crime, he was in close proximity to the original incident location, and he had fled when officers tried to approach him. There were no other reasons why Det. Gasperetti decided to pat down § 87(2)(b).

After he patted down § 87(2)(b) Det. Gasperetti heard over the radio that the suspect at the other location had been positively identified. Det. Gasperetti immediately removed the handcuffs and

told § 87(2)(b) that he could leave. Det. Gasperetti did not see any injuries on § 87(2)(b) and did not hear him complain of any pain or injury, but he later learned that § 87(2)(b) was taken to the hospital for a cut on his toe.

Sgt. Chang's statement (**BR 15**) was generally consistent with those of PO Nicoll and Det. Gasperetti with the following exceptions noted. As § 87(2)(b) was running away from PO Nicoll and Det. Gasperetti, he tripped on a pothole in the street before either officer could come into contact with him. Sgt. Chang decided that Det. Gasperetti and PO Nicoll should place § 87(2)(b) into handcuffs for safety reason because he had fled when they first approached him, was in close proximity to the location of the robbery, and he matched the description of the perpetrator. Sgt. Chang could not recall which officer patted down § 87(2)(b) did not make any complaints of pain or injury, and Sgt. Chang did not observe any injuries on his person.

Det. Gasperetti's (**BR 01**) and PO Nicoll's (**BR 02**), body-worn camera footage captures large portions of the incident. However, none of their footage clearly captures § 87(2)(b) coming to be on the ground. Det. Gasperetti's body-worn camera footage (**BR 01**) begins with him driving. At 00:22 seconds, Det. Gasperetti exits the car and starts running. At 00:28 seconds, § 87(2)(b) appears to be on the ground, and Det. Gasperetti appears to be standing over him. It is not clear from the video if there was any physical contact between Det. Gasperetti and § 87(2)(b) before he came to be on the ground. At 00:41 seconds, Det. Gasperetti says, "Get his hands." PO Nicoll and Det. Gasperetti take § 87(2)(b)'s hands, and PO Nicoll kneels next to § 87(2)(b) while holding § 87(2)(b)'s left shoulder to the ground with his left hand until 1:11 minutes. At 1:47 minutes, Det. Gasperetti and another officer lift § 87(2)(b) to a standing position, and Det. Gasperetti handcuffs him at 1:57 minutes. At 2:03 minutes, an officer, it is not clear who, asks, "What happened to your socks? You ran out of your shoes?" § 87(2)(b) answers, "Yea, like right there." Between 2:14 minutes and 2:38 minutes, Det. Gasperetti appears to pat the exterior of § 87(2)(b)'s jacket and squeeze his jacket pockets. Det. Gasperetti stands with § 87(2)(b) until 4:28 minutes, at which time a voice over the radio says, "Advising 183 Jamaica, that's going to be a negative. We got the perp."

PO Nicoll's body-worn camera footage (**BR 02**) is consistent with that of Det. Gasperetti and begins after § 87(2)(b) is already on the ground.

According to EVENT § 87(2)(b) (**BR 18**), § 87(2)(b) called 911 at approximately 5:16 p.m., and reported that he was wrongfully arrested because the officers thought that he was someone else and that he sustained bruises on his body.

As noted above, the Stop Report (**BR 20**), prepared by Det. Gasperetti, states that officers stopped § 87(2)(b) because he matched the description of an individual wanted in regard to a robbery in progress and was in close proximity to the crime. Officers identified themselves verbally and with their shields, and, as § 87(2)(b) ran away from them, he tripped out of his flip flops and fell to the ground. It also states that § 87(2)(b) was frisked but not searched because he fled from police and was wanted in regard to a "violent crime."

TRIs completed by Det. Gasperetti (**BR 21**), PO Nicoll (**BR 22**), the ISAR (**BR 23**), and the AIDED (**BR 24**) are generally consistent with the Stop Report and officer statements. Det. Gasperetti clarified that on the TRI he prepared (**BR 21**) he selected the drop box for "force used against MOS," but clarified that this is a problem within the system that denotes a false positive. In this particular case, § 87(2)(b) did not use any force against the officers.

§ 87(2)(g)

According to Patrol Guide Procedure 221-01 (**BR 27**), force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.

In People v. Perez, 116 A.D.2d 166, 1990 (**BR 28**) the court found that an officer who had reasonable suspicion to stop two individuals because they matched the description of individuals wanted in connection to a robbery did not need an independent source for believing that there was danger to frisk the defendants.

§ 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Kevin Nicoll searched § 87(2)(b)

It was disputed whether PO Nicoll searched § 87(2)(b)'s bag.

§ 87(2)(b) stated in his in-person statement (**BR 10**) that when Det. Gasperetti told him that he was free to leave, one of the officers gave him back his bag, and he then walked back to his shelter while the officers left the location. Once inside the shelter, § 87(2)(b) looked in his bag and saw a USB cord inside that did not belong to him. § 87(2)(b) immediately threw the USB cord away because it was not his and he did not know where it came from.

PO Nicoll (**BR 13**) stated that he was not sure what happened to § 87(2)(b)'s bag after § 87(2)(b) fell to the ground, but he assumed that one of the officers picked it up. PO Nicoll denied ever looking inside the bag, but he stated that at some point he did feel the exterior of the bag, and he determined that it contained what seemed to be a Styrofoam container of food.

Det. Gasperetti's statement (**BR 14**) was generally consistent with that of PO Nicoll with the following exceptions noted. Det. Gasperetti stated that § 87(2)(b) told him that there was food in the bag and that § 87(2)(b) had told the officers that they could look inside of the bag. However, Det. Gasperetti had no recollection of looking in § 87(2)(b)'s bag nor could he recall seeing any other officers look inside the bag.

Sgt. Chang's statement (**BR 15**) was generally consistent with those of PO Nicoll and Det. Gasperetti with the following exceptions noted. Sgt. Chang denied looking inside of § 87(2)(b)'s bag, and he could not recall if any other officers did so. Sgt. Chang could not recall if § 87(2)(b) told the officers what was in the bag or that they could look inside the bag.

PO Nicoll's body-worn camera footage (**BR 02**) captures PO Nicoll search § 87(2)(b)'s bag. At 00:38 seconds, PO Nicoll picks up the white plastic bag, which is on the ground, by both of the handles and then walks with the bag to back of the car from which he exited. PO Nicoll leaves the bag on the trunk and walks to where § 87(2)(b) is standing. At 1:40 minutes, PO Nicoll asks § 87(2)(b) "You have another cell phone on you?" § 87(2)(b) says that he does not, and, at 1:42 minutes, PO Nicoll walks back to the trunk of the car. At 1:47 minutes, PO Nicoll opens the bag. At 1:49 minutes, PO Nicoll's left hand is holding one bag handle and the bag appears to hang open. PO Nicoll's right hand is not in the frame, but the sound of plastic rustling is audible. At 1:51 minutes, PO Nicoll puts the bag down onto the trunk of the car. At 1:54 seconds, PO Nicoll holds up a gray cord, and, at 1:59 minutes, the sound of plastic rustling is audible again. PO Nicoll then walks away from the trunk of the car back to where § 87(2)(b) is standing.

At 2:30 minutes, Det. Gasperetti says, “He had the black bag and everything. I don’t know why he’s running on us. § 87(2)(b) who is in handcuffs and standing on the corner with Det. Gasperetti holding onto his arm, says, “You wanna check the bag? It’s food. Food is in the bag. That’s what in the bag. I didn’t steal nothing from nobody.”

The Stop Report (**BR 20**), prepared by Det. Gasperetti, states that § 87(2)(b) was not searched.

Although PO Nicoll denied ever looking in the bag and stated that he was only able to tell that the bag contained a Styrofoam food container because he felt the exterior of the bag incidentally during the course of the incident, PO Nicoll’s body-worn camera footage captures PO Nicoll holding the bag open with one hand, the sound of plastic rustling, and PO Nicoll holding a cord, which § 87(2)(b) later found inside of the bag. Although § 87(2)(b) tells officers that they can “check” the bag, this occurs after PO Nicoll searched the bag. The investigation, therefore, determined by a preponderance of the evidence that PO Nicoll searched § 87(2)(b)’s bag before § 87(2)(b) provided verbal consent to search the bag.

As noted above, PO Nicoll, Det. Gasperetti, and Sgt. Chang stopped § 87(2)(b) because he matched the description of an individual wanted in regard to a cell phone robbery, and they were holding him so that another patrol car with the victim inside could provide either a positive or negative identification. § 87(2)(b) was not ever considered to be under arrest, nor was § 87(2)(b) ever arrested regarding this incident.

According to People v. Reid, 24 N.Y.3d 615, 2014 (**BR 38**), a search must be incident to an actual arrest, not just probable cause that might have led to an arrest but did not.

§ 87(2)(g)

Allegation (H) Abuse of Authority: Detective Daniel Gasperetti failed to provide § 87(2)(b) with a business card.

Allegation (I) Abuse of Authority: Police Officer Kevin Nicoll failed to provide § 87(2)(b) with a business card.

Allegation (J) Abuse of Authority: Sergeant Kengming Chang failed to provide § 87(2)(b) with a business card.

It is disputed whether Det. Gasperetti, PO Nicoll, and Sgt. Chang offered to provide their business cards to § 87(2)(b)

§ 87(2)(b) (**BR 10**) stated that he never received any business cards from the officers involved.

PO Nicoll (**BR 13**) stated that after he verbally obtained § 87(2)(b)’s name and birthdate, he offered his business card to him, but § 87(2)(b) walked away without taking the business card.

Det. Gasperetti (**BR 14**) stated that he could not recall if he provided his business card to § 87(2)(b). Det. Gasperetti stated that officers are required to provide business cards during all stop situations, and that at the time of this incident he was equipped with business cards.

Sgt. Chang (**BR 15**) stated that he could not recall if he gave § 87(2)(b) a business card during this interaction. Sgt. Chang stated that it is required to provide business cards when they are requested, but that he was not sure if it was required to provide them during stops.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 30**).
- Sgt. Chang has been a member of service for 22 years and has been a subject in three CCRB complaints with a total of six allegations, none of which were substantiated. § 87(2)(g)
- PO Nicoll has been a member of service for four years and has been a subject in one complaint with a total of four allegations, none of which were substantiated. § 87(2)(g)
- Det. Gasperetti has been a member of service for eight years and has been a subject in nine complaints with a total of 29 allegations, of which two were substantiated.
 - 201208924 involved substantiated allegations of a frisk and a search. The Board recommended Command Discipline, and the NYPD imposed instructions.

Mediation, Civil and Criminal Histories

- Aleatha Walton, § 87(2)(b)'s legal guardian, declined to mediate this complaint.
- On August 2, 2019, a Notice of Claim was submitted to the Comptroller's office, the results of which will be added to the case file upon receipt (**BR 31**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**BR 32**).

Squad No.: 10

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date

